

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

AMERICAN PATENTS LLC,

Plaintiff,

v.

XEROX CORPORATION and DAHILL
OFFICE TECHNOLOGY CORPORATION
D/B/A XEROX BUSINESS SOLUTIONS
SOUTHWEST,

Defendants.

CIVIL ACTION NO. 6:21-cv-638-ADA

JURY TRIAL DEMANDED

**UNOPPOSED MOTION FOR LEAVE TO FILE SUR-REPLY TO DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

Pursuant to Local Rule 7(e)(1), Plaintiff American Patents LLC hereby requests leave to file a Sur-reply to Xerox's Motion to Dismiss Plaintiff's Complaint for Patent Infringement. A copy of the Sur-reply is attached as Exhibit A. Xerox provides the following statement regarding Plaintiff's Motion for Leave: "Under the Court's rules, Xerox does not believe a sur-reply is warranted and AP's motion for leave should be denied. However, Xerox will not oppose the motion."

Xerox's Reply in support of its motion to dismiss (Dkt. 27) makes unsupported arguments and proposes new legal theories, and generally ignores and obscures many of the legal arguments and factual allegations that American Patents provided in its Opposition (Dkt. 25). The brief Sur-reply will assist the Court in evaluating the issues and provide American Patents a fair opportunity to respond to Xerox's unsupported arguments and mischaracterizations. *See, e.g., Windecker v. Wei*, No. 1:18-cv-898, 2020 WL 248689, at *1 n.1 (W.D. Tex. Jan. 16, 2020) (granting motion to file sur-reply opposing Rule 12(b)(6) motion to dismiss).

For example, Xerox incorrectly states that a website linked in the Complaint is not available on archive.org; argues for a new and improper pleading standard in its own favor; and states that a disputed issue (Xerox's pre-suit knowledge of the Unexpired Patents) is undisputed. Further, Xerox incorrectly states the standard from the controlling Supreme Court opinion in *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754 (2011).

Accordingly, American Patents respectfully requests that the Court grant the Motion for Leave to file its Sur-reply to Xerox's Motion to Dismiss.

Dated: October 14, 2021

Respectfully submitted,

/s/ C. Ryan Pinckney
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on October 14, 2021.

/s/ C. Ryan Pinckney
C. Ryan Pinckney

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he conferred with counsel for Defendants, who stated that they will not oppose the foregoing motion ("Under the Court's rules, Xerox does not believe a sur-reply is warranted and AP's motion for leave should be denied. However, Xerox will not oppose the motion.").

/s/ C. Ryan Pinckney
C. Ryan Pinckney